

SERVED: June 16, 1993

NTSB Order No. EA-3900

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of June, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11791
v.)	
)	
CARL DEAN ADAMS,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent, appearing pro se, has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on September 4, 1991, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator suspending respondent's mechanic certificate for 30 days. We deny the appeal.

¹The initial decision, an excerpt from the hearing transcript, is attached.

The Administrator charged respondent with violating 14 C.F.R. 65.81(a).² The Administrator's chief witness, an FAA inspector, offered the logbook of Cessna N55349, which contained, as part of a maintenance and inspection entry signed by respondent and dated September 3, 1990, the entry: "replaced mag compass diaphra[g]m." Tr. at 9-10, 15-16, Exhibit A-1.³ The FAA inspector further testified that respondent admitted doing so. Tr. at 10-11. The record is unrebutted that respondent is prohibited, under the Federal Aviation Regulations, from repairing this instrument. If he had taken the compass to a certificated facility, the log should have showed he removed and reinstalled the compass after repair by the named facility. That facility would also provide documentation for the repair, such as a yellow tag for a repaired (or new) compass. Tr. at 18-19, 22.

Respondent did not testify. Respondent's former part-time employee testified to her recollection that he removed the compass and told her he had to take it to Houston to have it repaired. Respondent introduced two documents: a letter from a company in Houston (Aviall) recounting respondent's August 30, 1990 effort to purchase a compass (Exhibit R-1); and a notarized

²Section 65.81(a) provides: "A certificated mechanic may perform or supervise the maintenance, preventive maintenance or alteration of an aircraft or appliance, or a part thereof, for which he is rated (but excluding major repairs to, and major alterations of, propellers, and **any repair to, or alteration of, instruments**)" (Emphasis added.)

³In cross-examining the FAA inspector, respondent suggested that the statement in the log did not support a finding that he made the repair, only that it was made.

statement from a Monette Mathews that on August 30, 1990, a rebuilt magnetic airpath compass was bought for an aircraft in Center, TX (Exhibit R-2).⁴

After listening to all the evidence, much of which, as seen, was conflicting, the law judge concluded that "it seems more probably true than not true to me that you replaced the diaphragm. . .". Tr. at 39. The law judge noted weaknesses in respondent's evidence. Tr. at 37-8 (e.g., R-2 does not even say that it was Mr. Adams who purchased a compass). The law judge also recognized that, had respondent had the compass repaired, the logbook could easily have reflected that fact, rather than suggesting that respondent performed the repair. Id. at 38.

On appeal, respondent challenges the law judge's factual conclusions.⁵ As we have said on numerous occasions, resolution of credibility issues, such as are before us here, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge. Administrator v. Smith, 5 NTSB 1560,

⁴Ms. Mathews is not identified in the record. The Administrator's Exhibit A-2 includes the August accounts receivable of Texas Aircraft Instruments, the company to whom Aviall referred respondent in his search for a compass. The accounts show no sale or repair for respondent.

⁵The Administrator has moved to strike a considerable portion of respondent's brief on the grounds it is new evidence. We grant the motion. Part of respondent's brief itself is testimony that respondent chose not to offer at the hearing; he may not testify now. The attachments to the brief are notarized statements, also new evidence not properly before us on appeal.

Even were we to consider this new material, it offers no basis to overturn the law judge's credibility analysis, and respondent has still failed to offer documentary evidence that would prove his claim that someone else repaired the compass.

1563 (1987), and cases cited there. And, respondent's claim that much of the Administrator's evidence (such as the inspector's recitation of his conversation with respondent) is hearsay that should not be considered is inconsistent with our long-standing precedent,⁶ and does not warrant reversal.

Moreover, the fact that there may have been no operational problems with the compass has no relevance to whether respondent unlawfully performed repair on it, nor does the alleged uselessness of suspending respondent's certificate warrant reversal of the initial decision. Administrator v. Mohumed, NTSB EA-2834 (1988) at p. 11, and cases cited there (consideration of the impact of the sanction on the individual is directly contrary to established precedent; "the Board believes there is deterrent value when sanctions are imposed even for unintentional violations").

⁶See, e.g., Administrator v. Howell, 1 NTSB 943, 944 at n. 10 (1970) ("[H]earsay evidence is admissible in administrative proceedings, with its hearsay quality bearing only on the weight to be accorded such evidence.")

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to strike is granted;
2. Respondent's appeal is denied; and
3. The 30-day suspension of respondent's mechanic certificate shall begin 30 days from the date of service of this order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).